

### REMARKS

Claims 10-19 were rejected as being obvious over Lin in view of Awschalom. This rejection is respectfully traversed.

As explained in the attached Second Declaration of Dr. Samuel D. Harkness, IV, persons of ordinary skill in this art would immediately recognize that neither Lin nor Awschalom disclose *in situ* annealing as the term "*in situ*" is defined in the specification. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Because "annealing the caplayer *in situ*" of claim 10 is not disclosed in the cited references *as a whole*, the obviousness rejection should be withdrawn.

The Examiner should re-consider this application in light of the Second Declaration of Dr. Harkness and the definition of *in-situ* annealing provided in the specification. Please note that consistent with the well-established axiom in patent law a patentee is free to be his or her ~~own lexicographer and may~~ use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings. *Hormone Research Foundation Inc. v. Genetech Inc.*, 904 F.2d 1558, 15 USPQ2d 1039 (Fed. Cir. 1990).

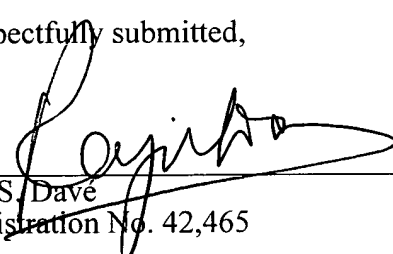
In light of the above, the anticipation and obviousness rejections should be withdrawn and a Notice of Allowance is respectfully solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952**, docket No. 146712001400.

Respectfully submitted,

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By:

  
Raj S. Dave  
Registration No. 42,465

Morrison & Foerster LLP  
1650 Tysons Boulevard  
Suite 300  
McLean, Virginia 22102  
Telephone: (703) 760-7755  
Facsimile: (703) 760-7777